

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PAUL A. HARPER,
Plaintiff,

v.

PATRICIA V. TRUMBULL,
Defendant.

Case No. [5:07-cv-04191-RMW](#) (EJD)

**ORDER RE: DOCUMENTS FILED ON
MAY 11, 2017**

Re: Dkt. Nos. 72-77

Plaintiff Paul A. Harper ("Plaintiff"), proceeding in propria persona, filed a series of documents on May 11, 2017, in this dismissed, closed action, including: (1) a "Notice of Motion and Motion Settlement Mediation" and supporting declaration (Dkt. Nos. 72, 73); (2) a "Notice of Motion and Motion Settlement Mediation Questionnaire" (Dkt. No. 74); (3) a proposed order on a settlement motion (Dkt. No. 75); (4) a purported "judgment" (Dkt. No. 76); and (5) a purported order permitting Plaintiff to proceed without paying fees and costs (Dkt. No. 77). These matters have been referred to the undersigned for general duty review upon the retirement of Judge Ronald M. Whyte.

The purpose of these documents is unclear. What is apparent, however, is they have no effect because nothing is pending to which they could apply. Notably, this action was dismissed without prejudice on October 9, 2007, after Plaintiff failed to pay the filing fee. Dkt. No. 17. Plaintiff's subsequent appeal was dismissed by the Ninth Circuit Court of Appeals on January 21, 2010, pursuant to Federal Rule of Appellate Procedure 42(b). Dkt. No. 25. Judge Whyte then issued orders denying Plaintiff's motions seeking fees and costs (Dkt. Nos. 28, 55). Plaintiff appealed from the second fees order, which proceeding the Ninth Circuit dismissed as frivolous on

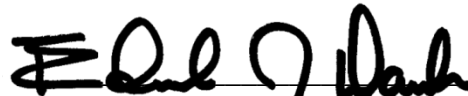
1 April 18, 2017. Dkt. No. 71. No issues were remanded to the district court, nor is there any need
2 for post-appeal proceedings related to settlement.

3 Moreover, Plaintiff cannot receive fees or costs. As previously explained by Judge Whyte,
4 judgment was entered against Plaintiff on October 9, 2007, and that judgment has not been
5 disturbed. Dkt. No. 18. Filing a new judgment does not change that fact. Consequently, Plaintiff
6 is still not the prevailing party and cannot recover costs under Federal Rule of Civil Procedure
7 54(d).

8 The motions filed on May 11, 2017 (Dkt. Nos. 72, 74) are DENIED. The Judgment filed
9 that same date (Dkt. No. 76) is STRICKEN.

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11 **IT IS SO ORDERED.**

12 Dated: May 12, 2017

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14 EDWARD J. DAVILA
15 United States District Judge
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